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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/669,245	09/25/2000	Danny H. Kuighadush	845-002	4286

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EXAMINER

CRONIN, STEPHEN K

ART UNIT	PAPER NUMBER
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3747

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/669,245
Filing Date: September 25, 2000
Appellant(s): KUIGHADUSH, DANNY H.

Joseph Sofer
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 21, 2006 appealing from the Office action mailed December 2, 2003.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,076,729	CORNELL et al.	6-2000
5,482,202	WEN	1-1996

(9) Grounds of Rejection

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The following ground(s) of rejection are applicable to the appealed claims:

Claims 15, 16, 20, 21 and 26-29 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In claim 15 line 6, "downwardly against said first side wall", and in claim 26, lines 6-7 "lower portion is disposed along said first Side wall, parallel to both the edges of and the plane of said first sidewall". Such limitation is not described in the specification. Figures 9A and 9B merely show interrupted lines to indicate a straw is broadly located inside the container. The specific orientation of the lower portion of the straw as claimed is not shown.

Claims 15, 16 and 20-29 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Wen 5,482,202.

Wen shows all of the structure as recited in the claims. Wen shows the straw with pleats.

Claims 15, 16 and 20-29 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Cornell et al.

Cornell shows all of the structure as recited in the claims. Cornell (figures 8-30) shows the straw with pleats.

(10) Response to Argument

In response to applicants arguments directed to the rejection of claims 15, 16, 20, 21 and 26-29 are rejected under 35 U.S.C. 112, first paragraph, the following is submitted. There is nothing in the originally filed specification that supports the claimed limitations set forth in the rejection. Applicant argues that figures 9a and 9b as well as the description of figures 9a and 9b fully support the claimed limitations. The specification does not teach this and the drawings do not show this. As to the declarations submitted by applicant under 37 CFR 1.132, these are deficient for the following reasons. Each of the declarations fails to establish that the person giving the declaration is of "ordinary skill in the art". Further, the statements contained in each are based upon opinion and not fact. Finally, if one were to agree that the statements that figures 9a and 9b fully support the claimed limitations, then figure 8a of Cornell et al. would fully show the claimed structure and would therefore have to be considered anticipatory. The side elevation of figure 8a which is shown in figure 8b of Cornell et al., however does not support this conclusion and further supports the rejection of the claims under 35 U.S.C. 112, first paragraph, since one must conclude that figures 9a and 9b must only show that the straw is in the container, and not specifically against the side wall unless further set forth in the specification and/or drawings. It is noted that the claims were rejected under 35 U.S.C. 112, first paragraph for the limitations identified in the rejection alone. All arguments presented directed to other limitations set forth in the claims are therefore considered moot. It is further noted that claim 22 has not been

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rejected under 35 U.S.C. 112, first paragraph and therefore applicants arguments directed toward this claim are considered moot.

In response to applicants arguments directed to the rejection of the claims under 35 USC 102 (b) and (e) as being fully anticipated, the following is submitted. Applicant argues that neither Wen or Cornell et al. teach the limitations in the claims rejected under 35 U.S.C. 112, first paragraph. The examiner does not disagree with these arguments other than to state that if applicants' specification and drawings are found to be fully supportive of these limitations, then figure 8A of Cornell must be considered to fully anticipate this limitation. The applied prior otherwise fully teaches applicants claimed invention.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Stephen K. Cronin

SPE

AU 3747

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